as to cash sales. Such a result would mean that the courts by an arbitrary misuse of words, and by treating sales which in fact are conditional as cash sales, could override the obvious intent of the lawmakers to safeguard the property rights of the innocent purchaser. C. E. E.

THE TIME AT WHICH A POLITICAL ASPIRANT BECOMES A CANDIDATE WITHIN THE MEANING OF THE MODERN PRIMARY ELECTION LAW.—Owing to the comparatively recent development of the system of primary elections, the law which concerns this, the most recent development in our system of government, is necessarily in a formative stage.

Two leading decisions on the above stated question,—*Adams* v. *Lansdon* (1910), — Idaho —, 110 Pac. 280, and *State ex. rel. Brady* v. *Bates,* 102 Minn. 104, 112 N. W. 1026, are of considerable interest and importance as illustrating the different holdings of the respective courts of Idaho and Minnesota, upon the same points.

In the former case under the provisions of § 24 (Sess. Laws of Idaho, 1909, p. 196) a candidate for nomination is prohibited from expending for personal expenses, or at all, in order to promote his nomination, more than fifteen per cent. of the yearly compensation or salary attached to the office which he seeks and in order to comply with § 25 (Sess. Laws of Idaho, 1909, p. 196), he must file an itemized statement of his expenditures not more than ten days after the day of holding the primary election at which he is a candidate. The court held (1) a person is a candidate for nomination within the intent of the primary election law when he is expending his money in employing and sending out workers, or perfecting an organization, or advertising or exploiting himself, or in influencing public opinion in his favor or against his opponent, or in numerous other ways that present themselves to the office seeker for the purpose of increasing or enhancing his ultimate chances of nomination for a given office, (2) that in his itemized statement of expenditures, the candidate must include all items contracted or paid prior to filing his nomination papers as well as those incurred subsequent thereto.

In Minnesota under the provisions of § 350 (Rev. Laws, 1905), every person who shall be a candidate for a nomination or election to any elective office including that of United States Senator shall make in duplicate within thirty days after the election, a verified statement of his expenditures. The court held that a political aspirant becomes a candidate at the time of filing his affidavit of intention of becoming a candidate for a specified office, and the verified statement which he is required by law to file need not include items of expense incurred or paid anterior to the time of filing such affidavit.

The cases on these two points are very rare and the courts are in direct conflict. While both lines of authority are supported by good reasoning, the Idaho case would seem to lay down the more logical rule, *Leonard* v. *The Commonwealth,* 112 Pa. 607, 4 Atl. 220, holding that a man is a candidate for office when he is seeking such office and that it is begging the question to say that he is a candidate only after nomination; for many persons have been elected to office who have never been nominated.

The court in the Minnesota case substantiates its decision by saying that if the time of becoming a candidate was fixed at the time when the intention was formed and acted upon, a man who entered the race and later dropped out, would be under the necessity of filing an expense account or render himself liable to a misdemeanor. The impossibility of such a contingency under the Idaho statute, and the probability of such a result under the Minnesota statute, appears to be the cause of the conflicting decisions. By the terms of the former, it is provided:—that every candidate shall, not more than ten days after the day of holding the primary election, *"at which he is a candidate,"* file an itemized statement, etc., while the latter statute says:—that every person who shall be a candidate shall make in duplicate within thirty days after the election, a verified statement, etc. It will be seen in comparing the two statutes, that while the former contains the words, *"at which he is a candidate,"* the latter wholly omits them. Therefore, taking the construction of the Idaho court, viz., that a person is a candidate before he has filed his nomination papers, it is self-evident that the Idaho statute could apply only to those who file their nomination papers, and whose names go upon the ballot; while the Minnesota statute could, and under construction of the court would, refer to any person who enters the race and solicits votes, irrespective of whether or not the nomination or election is *"one at which he is a candidate."*

The Minnesota court is therefore justified in its statement, that a man who entered the race and later dropped out would be under the necessity of filing an expense account or render himself liable to a misdemeanor, if the time of becoming a candidate was fixed at the time when the intention was formed and acted upon. Such a result would be impossible under the Idaho statute which applies only to persons who are actually candidates at the election itself and whose names go upon the ballot.

Looking at the two cases in the light of public policy the Idaho case would seem to be the better holding, as the serious objection to the Minnesota statute, and the rule based thereon, is that it makes it possible for the candidate to debauch the electorate and the press of the state, provided he accomplishes it twenty days before the primary election, this being the time fixed for the filing of nomination papers.

The court in the Idaho case cites the Minnesota decision and directly disapproves of the holding therein. Its position in this regard seems a defensible one from the view point last mentioned above. On the other hand the Minnesota court was acting under a statute which differed materially from that, which governed the action of the Idaho court, and its conclusion was of necessity affected thereby.

Of course the way out of the difficulty in which the Minnesota court found itself, would be to amend the Minnesota statute so as to conform to that of Idaho, so that it would refer to those persons alone, who are candidates at the nomination or election, and whose names actually go upon the ballot. That would relieve the office seeker who spends money with the intention of becoming a candidate and then withdraws, from the necessity of filing a statement of his expenditures. In this way both the candidate who

drops out and the electorate at large are protected, in that, the former is not liable to commit a misdemeanor under any construction and the latter is protected from the unscrupulous office seeker who buys his way into positions of trust and honor. B. H. D.

WHEN ARE LETTERS WRITTEN BY A HUSBAND TO HIS WIFE NOT PRIVILEGED? —In a recent case decided in the supreme court of Michigan this interesting question was considered. *People* v. *Dunnigan* (1910), — Mich. —, 128 N. W. 180.

The case arose out of substantially these facts. The respondent, in connection with others, was prosecuted and convicted of murder in the first degree. The principal, if not the only, evidence produced by the state to connect respondent with the commission of the crime, was a certain letter written by Dunnigan to his wife, under the following circumstances. While respondent was in jail, awaiting trial, one Wilcox, an acquaintance of the respondent, was admitted to his cell, and suggested to respondent that if he wished to communicate with his wife, he, Wilcox, would carry a letter to her, whereupon respondent wrote and addressed to his wife the letter above referred to.

He delivered the letter to Wilcox, who in pursuance of a previous agreement, gave it to the sheriff. The letter was produced in evidence against respondent at his trial, and admitted, and on the strength of the statements which it contained he was convicted. On appeal he based error on the admission of the letter in evidence, contending that it was a confidential communication between husband and wife, and as such, privileged. The Supreme Court of Michigan per BROOKE, J., affirmed the conviction, holding that the letter was not a privileged communication under the circumstances of the case, and citing and relying upon their previous decision in *O'Toole* v. *Ohio German Fire Insurance Co.*, 159 Mich. 187, 24 L. R. A. (N. S.) 802.

The authorities are not entirely in accord, as to just what circumstances will render admissible in evidence a communication between husband and wife, which would, but for those circumstances, be privileged. When, however, we consider the circumstances under which the letter was written and delivered, together with the considerations which lie at the foundation of the whole rule as to privileged communications between husband and wife, it would seem as if the decision of the court in *People* v. *Dunnigan,* supra, is at least doubtful. TAYLOR, C. J., speaking for the Supreme Court of Florida, in *Mercer* v. *State,* 40 Fla. 216, stated the basic reason of the rule of privileged communications between husband and wife as follows:—"Society has a deep-rooted interest in the preservation of peace of family, and in the maintenance of the sacred institution of marriage, and its strongest safeguard is to preserve with jealous care from any violation those hallowed confidences inherent in it, and inseparable from the marriage status. Therefore the law places the ban of protection upon any breach of the confidence between husband and wife, by declaring all confidential communications between them to be incompetent matter for either of them to expose as witnesses." See also *State* v. *McAuley,* 4 Heisk. 424. It is quite apparent that a communication,